

Message Text

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ACTION OPIC-06

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TO SECSTATE WASHDC 3882

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FOR OPIC POATS/ZOLA

E.O. 11652: N/A

TAGS: EFIN, NO

SUBJECT: BERNE UNION: BILATERAL DISCUSSIONS

1. BELOW IS MESSAGE FROM KRAMISH TO POATS/ZOLA:

QUOTE JAPAN EID/MITI REPRESENTATIVES VERY FORTHCOMING BUT NOT FULLY PREPARED TO DISCUSS DETAILS OF COVERAGE AGAINST "CREEPING" EXPROPRIATION. HAVE NOT, AS YET, CONSIDERED RELEVANT CLAIM. EID/MITI CONTRACT PROTECTS JAPANESE INVESTOR AGAINST HARMFUL ACTS OF HOST GOVERNMENT AFFECTING INVESTOR'S ESTABLISHED RIGHTS AND BENEFITS. MINING RIGHTS REFERRED TO SPECIFICALLY AND VIOLATION OF CONCESSION AGREEMENT COVERING MINING, FISHING, AND OTHER ESTABLISHED RIGHTS WOULD BE BASIS FOR CLAIM. TAXES, PRICE CONTROLS, BUREAUCRATIC HARASSMENT, AND OTHER ACTS WHICH MIGHT LEAD TO "CREEPING" EXPROPRIATION CLAIM NOT COVERED EXPLICITLY. HOWEVER, CLAIM WOULD ARISE IF SUCH ACTIONS HAD RESULT OF STOPPING OPERATIONS OF FOREIGN ENTERPRISE FOR SPECIFIC PERIOD (SIX MONTHS) OR WERE LEADING TO BANKRUPTCY. EID/MITI, LIKE OPIC, WOULD CONSIDER MERITS OF CLAIM ON CASE BY CASE BASIS. ABSENCE OF "CREEPING" EXPROPRIATION CLAIM THUS FAR PREVENTS MITI FROM BEING MORE SPECIFIC ON APPLICATION OF GENERAL CONTRACT PROVISIONS. EXPROPRIATION BY GRADUAL OR PARTIAL DIVESTMENT OF SHARE OWNERSHIP COVERED EXPLICITLY BY MITI AS WELL AS TREUARBEIT. IN SUCH EVENT, BOTH AGENCIES WOULD PAY LESSER OF BOOK VALUE OF SHARES TAKEN OR AMOUNT PAID BY INVESTOR FOR SUCH SHARES.

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INVESTOR'S RIGHTS LIMITED TO SHARES LOST AND WOULD NOT INCLUDE CLAIM FOR FULL COMPENSATION ON ALL OR NOTHING BASIS AS REQUIRED BY OPIC. MITI NOT INTERESTED IN SUBROGATION BUT RESERVES RIGHT OF ASSIGNMENT ON PAYMENT OF A CLAIM. IT HAS NOT AND DOES NOT INTEND TO EXERCISE THAT RIGHT. SUBROGATION OF IMPORTANCE TO TREUARBEIT. VALID CLAIM BASED ON "CREEPING" EXPROPRIATION (EXCLUDING PARTIAL SHARE DIVESTURE) WOULD REQUIRE

FULL ASSIGNMENT INSURED SECURITIES. BOTH MITI AND TREUARBEIT PLACE BURDEN ON INVESTOR AS TRUSTEE IN PURSUING REMEDIES, AFFECTING RECOVERY, ETC. EXPROPRIATION OF ASSETS OF FOREIGN ENTERPRISE, UNLIKE SHARES, WOULD NOT GIVE RISE TO CLAIM UNLESS SUCH EXPROPRIATION RESULTED IN HALT OR SERIOUS REDUCTION OF OPERATIONS FOR AT LEAST SIX MONTHS OR IN BANKRUPTCY. MITI C COVERAGE EXTENDS TO BUSINESS INTERRUPTION AND INCLUDES, IN ADDITION TO WAR, REVOLUTION, AND INSURRECTION, CIVIL WAR, RIOT, OR TURMOIL. B AND C EVENTS NOT CLEARLY AND/OR SEPARATELY DEFINED AS IN OPIC CONTRACT. ISOLATED ACTS, LABOR DISTURBANCES WOULD, ACCORDING TO MITI REPRESENTATIVE, BE EXCLUDED. TEST WOULD BE EFFECT OF EVENTS ON FOREIGN ENTERPRISE, I.E., STOPPAGE OF OPERATIONS OR LIKELIHOOD OF BANKRUPTCY. SCALE, SIZE, DURATION, AND INTENSITY OF EVENT APPEAR TO BE IMPORTANT CONSIDERATIONS IN DECIDING IF VALID CLAIM EXISTS. NEW PROPOSED AUSTRALIAN CONTRACT (SEE BELOW) BROADENS WAR COVERAGE TO INCLUDE 'WAR-LIKE OPERATION' E.G., CIVIL WAR, RIOT, CIVIL COMMOTION, REVOLUTION, INSURRECTION, REBELLION, OR 'ANY SIMILAR HAPPENING, WHICH IN THE OPINION OF EFIC IS SUBSTANTIALLY EQUIVALENT THERETO.' EID/MITI COVERAGE IN PRODUCTION-SHARING WOULD, IN EVENT OF BUSINESS INTERRUPTION, PROVIDE COVERAGE SIMILAR TO THAT IN FILON. HOWEVER, MITI COVERAGE DOES NOT DECLINE IN RELATION TO RECOVERED COSTS BUT REMAINS CONSTANT OVER FULL TERM OF CONTRACT UP TO 15 YEARS. MITI WOULD PAY FULL INSURED AMOUNT ON BUSINESS INTERRUPTION

AND WOULD, AS OPIC, REQUIRE REPAYMENT IF PRODUCTION CAN BE RESUMED. MITI DOES NOT SEEK TO COMPENSATE FOR LOST PRODUCTION. HOWEVER, TREUARBEIT WHICH IS DEVELOPING NEW OIL POLICY, WOULD ALLOW SOME UNCLASSIFIED

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COVERAGE FOR LOSSES OTHER THAN COSTS. THIS WOULD BE DIFFERENCE BETWEEN MARKET PRICE OF OIL AND DISCOUNT PRICE TO INVESTOR. BECAUSE OF DIFFICULTY IN DETERMINING PRICES, TREUARBEIT WILL DECLINE ESTIMATED MAXIMUM, INCLUDING COSTS AND DISCOUNT, OVER TERM OF YEARS. DETAILS NOW BEING WORKED OUT. FORWARDING BY AIR THIS DATE COPIES OF EID/MITI POLICIES COVERING 5 DIFFERENT TYPE INVESTMENTS (EQUITY, LOAN, ETC.). ALSO, FORWARDING NEW DRAFT AUSTRALIAN CONTRACT FOR STUDY AND COMMENT. EFIC HAS REQUESTED OPIC COMMENT BY JUNE 30. HAVE DISCUSSED DETAILS OF ESB (KOREA) AND SUPERIOR OIL OF CANADA (D.R.) WITH CULHAM WHO IS PREPARED TO APPROACH BOTH ON RISK-SHARING BASIS WITH OPIC. CULHAM PREPARED TO CONSIDER REINSURANCE AND/OR JOINT UNDERWRITING BASED ON NATIONAL SHARE INTEREST (ESB, 35 PERCENT US-55 PERCENT CANADA; SUPERIOR OIL OF CANADA 53 PERCENT US-47 PERCENT CANADA). CULHAM BELIEVES REINSURANCE APPROACH PRESENTS NUMEROUS ADVANTAGES BUT MIGHT ENCOUNTER LEGAL PROBLEMS AND PROTRACTED DELAY SINCE EDC AUTHORITY TO ENTER REINSURANCE ARRANGEMENTS MAY REQUIRE PARLIAMENTARY CLARIFICATION. JOINT UNDERWRITING COULD BE UNDERTAKEN, DESPITE

DIFFERENCES IN CONTRACT, WITH EDC-OPIC SIDE LETTER PROVIDING FOR CONSULTATION. BELIEVE GC HAS ALREADY COMPARED OPIC AND EDC CONTRACTS.

EDC WILL SHORTLY APPROACH ITS BOARD ON BOTH PROJECTS AND PROMPT OPIC DECISION ON HOW TO PROCEED WILL BE REQUIRED. CULHAM UNABLE STOPOVER WASHINGTON OR RETURN FROM BERNE UNION MEETING. BUT, PREPARED TO COME TO WASHINGTON IN JULY IF MEETING IN OTTAWA NOT POSSIBLE BEFORE TEN. ASSUME YOU ARE IN CONTACT WITH OTTAWA ON THESE PROJECTS.

PLEASE INFORM COLDIRON THAT DUTCH NCM HAVE AGREED TO INQUIRE INTO CAUSE FRO DELAY OF FGA ON PROJECTS IN NETHERLANDS ANTILLES. ECGC (INDIA) ADVISES THAT FINANCE MINISTRY EXPECTED TO APPROVE INVESTMENT INSURANCE PROGRAM WITHIN 2 MONTHS. ECGC EXPECTS TO CONTACT OPIC FOR ASSISTANCE IN ESTABLISHING PROGRAM. FINNS HAVE DEFERRED PLANS TO ESTABLISH PROGRAM. UNQUOTE.
ANDERS

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